



Advisory Opinion 09-013

This is an opinion of the Commissioner of Administration issued pursuant to Minnesota Statutes, section 13.072 (2008). It is based on the facts and information available to the Commissioner as described below.

Facts and Procedural History:

On May 19, 2009, the Information Policy Analysis Division (IPAD) received a letter, dated May 15, 2009, from "X." In his/her email, X asked the Commissioner to issue an advisory opinion regarding whether, pursuant to Minnesota Statutes, Chapter 13, Independent School District 659 (Northfield) violated X's rights as a data subject.

IPAD, on behalf of the Commissioner, wrote to L. Chris Richardson, District Superintendent, in response to X's request. The purposes of this letter, dated May 26, 2009, were to inform him of X's request and to ask him to provide information or support for the District's position. Dr. Richardson responded, in an email dated June 5, 2009.

A summary of the facts as X presented them follows. In his/her opinion request, X referenced (and enclosed) a letter X sent to the federal Family Policy Compliance Office, and emails between X and the District, in which s/he alleged that the District had violated state and federal laws governing data about X's child.

X wrote: "[A District teacher] engaged in the practice of writing on [his/her] classroom blackboard the names and actual test scores of each student . . . who had received an A or a B on classroom tests"

In his comments to the Commissioner, Dr. Richardson wrote:

Under the MGDPA and FERPA, this teacher's action may be a violation of the students' rights to privacy. While it could be argued that the posting of the top test scores was a classroom award, or that the individual test scores are not educational data, the District has discontinued the practice. . . .

The student's [X's child's] score had only been posted when it was among the high scores for that unit or chapter. The teacher stated that this was a common AP [Advanced Placement Program] motivational strategy which was suggested to [her/him] by an AP conference presenter. However, the District took swift action to explain the situation and to inform the teacher that [s/he] had to discontinue posting the top students [sic] names and scores.

There may be an argument that individual test scores such as those posted do not constitute ‘educational records’ under FERPA. The Supreme Court has ruled that individual assignment grades that are shared with the entire class after they have been peer graded are not education records because they are not yet ‘maintained’ as required under FERPA. *Owasso Indep. Sch. Dist. v. Falvo*, 122 S.Ct. 934, 939 (2002). That Court also stated that the individual results were not educational records because the Legislature [sic] could not have meant to give parents the ability to challenge the accuracy of the grade on an assignment or test, as is required by FERPA for all educational records. *Id.*

However, the District understands that the practice of posting the names and grades of high scoring students is most likely a FERPA and MGDPA violation. Thus, the District has taken corrective action with the teacher who posted the grades in order to stop the postings. The District has also taken preemptive action against future violations through staff training in order to ensure that all staff members understand the responsibilities imposed by FERPA and the MGDPA.

Issue:

Based on X’s request, the Commissioner will address the following issue:

Did School District 659 (Northfield) comply with Minnesota Statutes, Chapter 13, if it took the actions described in a May 15, 2009, advisory opinion request?

Discussion:

Pursuant to Minnesota Statutes, section 13.03, government data are public unless otherwise classified. Minnesota Statutes, section 13.02, subdivision 8, defines an individual to include a parent or guardian, or someone who is acting as a parent or guardian.

Data about students are governed by both Minnesota and federal law. Minnesota Statutes, section 13.32, classifies data relating to students and incorporates by reference much of the federal Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. §1232g, and its implementing regulations, 34 C.F.R. Part 99. Those data (termed “education records” under FERPA and “educational data” under section 13.32), subject to limited exceptions, are classified as private (see Minnesota Statutes, section 13.02, subdivision 12.)

Dr. Richardson stated that per the United States Supreme Court holding in *Owasso*, the test score data may not be considered an education record for purposes of FERPA. The Commissioner does not have sufficient information to make that determination, and, according to Dr. Richardson, the District nevertheless believes that it violated state and federal law when it posted the test score without consent. Regardless, a student’s test score is private educational data according to section 13.32, and may not be disseminated without consent.

The District has acknowledged that the practice of posting individual student’s test scores by name violates FERPA and section 13.32, and has taken measures to ensure it does not do so again.

Opinion:

Based on the facts and information provided, my opinion on the issue that X raised is as follows:

School District 659 (Northfield) did not comply with Minnesota Statutes, Chapter 13, when it posted a test score that identified X's child.

Signed: Sheila M. Reger
Sheila M. Reger
Commissioner

Dated: June 23, 2009